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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,938	02/22/2002	Stacey A. Infantino	HANN-0002	6412
23550	7590	10/03/2003	EXAMINER	STEPHENS, JACQUELINE F
HOFFMAN WARNICK & D'ALESSANDRO, LLC 3 E-COMM SQUARE ALBANY, NY 12207			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 10/03/2003  
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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/081,938	INFANTINO ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jacqueline F Stephens	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 April 2002 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). Misnumbered claims 19-26 have been renumbered 18-25.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-6, 8-10, 12-17, 19-23, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Kitaoka et al. USPN 6425889.

As to claim 1, Kitaoka discloses an incontinence article, comprising: a front portion **20**; a rear portion **22** joined to the front portion; and a bumper **6** positioned on at

least one of the front portion and the rear portion. The foamed member **6** of Kitaoka is considered a bumper in that Kitaoka uses the foamed member to improve the cushioning property of the diaper and contribute to the comfort of the user (col. 5, lines 13-21).

As to claims 2 and 4, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4). The liquid-resistant sheet **5** of Kitaoka is considered a guard in that Kitaoka discloses the sheet and bumper form a pocket, which is used to prevent body wastes from leaking outward from front and rear waist regions of a diaper (col. 1, lines 34-38)

As to claim 3, Kitaoka discloses a back guard **5** extending from the rear portion, wherein the bumper is attached along a top edge of the back guard (Figures 2 and 5).

As to claim 5, see Figure 1.

As to claim 6, see Figure 4.

As to claim 8, Kitaoka discloses an incontinence article, comprising: a front portion **20** having a front guard extending therefrom; a rear portion **22** having a back guard **5** extending therefrom; a crotch portion **21** between the front portion and the rear portion; and a bumper **6** positioned on at least one of the front guard **5** and the back guard **5** (Figures 1, 2, and 5; col. 4, line 66 through col. 5, line 4 – where Kitaoka

discloses the guard **5** and bumper **6** are disposed not only in the rear waist region **22**, but also in the front waist region **20**).

As to claims 9 and 13, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 10, see Figures 2 and 5.

As to claim 12, see Figure 1.

As to claim 14, Kitaoka discloses an incontinence article, comprising: a front portion **20**; a rear portion **22** having a back guard **5** extending therefrom; a crotch portion **21** between the front portion and the rear portion; and a bumper **6** positioned on at least one of the front portion and the back guard.

As to claim 15, see Figure 1.

As to claim 16, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 17, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 19, see Figure 4.

As to claim 20, Kitaoka discloses an incontinence article, comprising: a front portion **20** having a front guard **5** extending therefrom; a rear portion **22**, a crotch portion **21** between the front portion and the rear portion; and a bumper **6** positioned on at least one of the front guard **5** and the rear portion (Figures 1, 2, and 5; col. 4, line 66 through col. 5, line 4 – where Kitaoka discloses the guard **5** and bumper **6** are disposed not only in the rear waist region **22**, but also in the front waist region **20**).

As to claim 21, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 22, see Figure 1.

As to claim 23, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 25, see Figure 1.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7, 11, 18, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitaoka. Kitaoka discloses the present invention substantially as claimed. However, Kitaoka does not disclose the bumper is a roll. It would have been an obvious matter of design choice to provide the article of Kitaoka with a roll-shaped bumper, since such a modification would have involved a mere change in the shape of the component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In Re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)

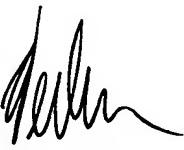
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens  
Examiner  
Art Unit 3761

September 26, 2003



WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700